HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO. 1218 OF 2007

BETWEEN:

B. Pramadhwara

.....Petitioner

And

State Bank of Hyderabad,
Sanjeeva Reddy Nagar Branch & others

.....Respondents

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:: O R D E R ::

Counsel for the petitioner : Shri R. Raghunandan

Counsel for respondent No.1 : Shri Ch. Ravinder Babu

11th April 2007

Per G.S. SINGHVI, CJ

In this petition, the petitioner has prayed for setting aside order

dated 30.10.2006 passed by the Debts Recovery Appellate Tribunal at Chennai (for short, 'the Appellate Tribunal') in M.A.No.88 of 2006 and also for restraining State Bank of Hyderabad (for short, 'the bank') from selling her property i.e. flat No.A7, III Floor of Sai Mansion, 8-2-676/1/B, Road No.13, Banjara Hills, Hyderabad.

A perusal of the record shows that the bank filed an application before the Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act') for recovery of the loan advanced to M/s Hontex Engineering Limited. The same was registered as O.A.No.738 of 2001. The petitioner was one among the 11 persons who were impleaded as parties to the O.A. because as per the bank, she had mortgaged the property in question as a security for repayment of loan by M/s Hontex Engineering Limited. All the impleaded persons are said to have been served with the notice issued by the Tribunal, but none filed reply to contest the application. Therefore, after considering the evidence produced by the bank, the Tribunal passed decree dated 04.08.2003 for recovery of Rs.39,27,980.59 with costs, current and future interest @ 16% per annum with quarterly rests from the date of the claim till the date of realisation.

After about 6 ½ months, the petitioner filed miscellaneous petition before the Tribunal for setting aside ex parte decree dated 04.08.2003 by alleging that she was owner of the property in question; that she had left India in 1997 for pursuing her study in Bulgaria; that in November 1998, she executed an agreement of sale in favour of Smt. P. Renuka and put her in possession; that she had not mortgaged the property in favour of the bank and that she was not served with the notice of the O.A. The same was registered as M.A.I.R.No.49 of 2004. She also filed an application (I.A.No.282 of 2004) for condonation of 205 days' delay in filing the miscellaneous petition. In the affidavit

filed by her, the petitioner averred as under:

> "3. I submit that I am residing at Republic of Bulgaria from 1997 onwards. In the month of August 2003, Smt. P. Renuka, W/o Ram Mohan Rao called me over phone and stted that la case is filed against me and others (I was shown as defendant No.6) by State Bank of Hyderabad, Sanjeevareddy Nagar Branch, rep. by its Chief Manager before the Hon'ble D.R.T. I was further informed that a decree was passed against me and the flat sold by me was mortgaged with the bank.
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> 4. I submit that I purchased Residential Pent house flat bearing No.A7 in Sri Sai Mansion bearing M.C.H. No.8-2-676/1/B, Road No.13, Banjara Hills, Hyderabad through a registered sale deed bearing No.23/93 from Faalunnisa and 6 others. The above sale deed was executed in the office of the Sub-Registrar, Khairatabad. I submit that I have sold the above property to Smt. P. Renuka, W/o P. Rama Mohana Rao for a total consideration of Rs.4,0,000/- (Rupees four lakhs only) by executing agreement of sale and by giving possession of the property. I submit that I do not have any right over the said property. As the original document bearing No.23/93 was misplaced I promised to Smt. P. Renuka that I shall execute the sale deed and handover the original sale deed as and when found. In the mean time, I left India and requested my father to trace the same.
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> 5. I submit that in the month of August, 2003, I was informed by Smt. P. Renuka that the above property is mortgaged with the State Bank of Hyderabad, Sanjeevareddy Nagar Branch as collateral security for M/s Hontex Engineering Ltd. I submit that I do not know the M/s Hontex Engineering Ltd., nor I am associated in any way nor executed any mortgaged with State Bank of Hyderabad as alleged by the Bank i.e. the applicant in O.A.No.238 of 2001. I was informed by Smt. P. Renuka that by letter dated 11.1.1998 I executed the alleged mortgage in favour of the applicant and the same has been filed before the D.R.T. by the bank. I submit that I left India on September 7th 1997 and returned to India

only on 22nd July 1999. On the date of executing the letter i.e. on 11.11.1998 I was not present in India. Some persons seems to have illegally obtained the custody of the registered sale deed bearing document No.23/93 registered with office of the Sub Registrar Khairatabad which was lost from my custody and seemed to have forged my signature and executed the alleged letter dated 11.1.1998 creating mortgage of the above property (shown as schedule C in the O.A.)

6. I submit that I am filing my notarized passport which clearly indicated that I was not in India during that period. I have completed my MBBS (Bachelor of Medicine and bachelor of Science) from Bulgaria and I have been given a visa to England to appear for PALB exam in the month of April, 2004, hence I need my original pass port and I am ready to produce the same before this Hon'ble Court for verification. I submit that the documents creating the mortgage were fabricated and my signatures were forged with the active convenience of the bank officials, as my physical presence was necessary in the Bank at the time of creating the said mortgage. The said fabricated documents do not create any right or interest in the property (Schedule C) in favour of the applicant bank in the above said O.A.

7. I submit that the applicant Bank being a Scheduled Bank should not have indulged in fabricating and forging the documents creating interest in their own favour. The bank has approached this Hon'ble Court by suppressing the true facts; hence it is not entitled to any relief from this Hon'ble Court. I reserve my right to initiate appropriate legal action against the applicant and its officers.

8. I submit that the above O.A. was allowed and a decree was passed on 4.8.2003 for recovery of some amounts due from M/s Hontex Engineering Ltd. I reliably came to know that basing on the orders passed by the Hon'ble Court D.R.T. the bank is proceeding for the sale of the above property and if bank is allowed to proceed further pursuant to order dated 4.8.2003 of the Hon'ble D.R.T. my vendee will be put to irreparable loss and I shall be held responsible for the loss suffered by

my vendee. I further submit that I have not mortgaged the above property and some one has forged my signature and mortgaged the above property."

In the counter filed on behalf of the bank, it was averred that the flat in question was mortgaged by the petitioner for repayment of the loan given to M/s Hontex Engineering Ltd.; that the borrower did not repay the amount of loan as per the schedule specified in the agreement necessitating filing of an application under Section 19 of the Act, which was decreed because none of the respondents appeared to contest the application. It was further averred that the explanation given by the petitioner for condonation of delay was wholly unsatisfactory.

After considering the rival pleadings, the Tribunal vide its order dated 11.04.2005 dismissed the application for condonation of delay. The relevant portions of that order are reproduced below:

" A reading of the paragraphs 1 to 9 of the affidavit filed by the petitioner reveals that there is a delay of 206 days in filing the petition for setting aside the ex parte orders. It is seen that nothing is written about the non-filing of the said petition within the period of limitation and thus it can easily be said that no sufficient cause has been shown by the petitioner for not filing the petition in time.

It is also seen that not even a single word has been written in the affidavit of the petitioner to explain the delay of 206 days and in the absence of any attempt on the part of the petitioner to explain the delay, it has to be held that the delay, which ought to have been explained on a day-to-day basis has not at all been even attempted to be done.

Therefore, from the above, it is seen that the petitioner has not even attempted to show a sufficient cause for not filing the petition within the period of limitation and has also not made any attempt to explain the delay of 206 days that has occurred in this case.

Further, a perusal of the records reveals that the summons sent to her were received by one B. Sarala and in view of this it has to be taken that the summons were served as required under law.

Therefore, from the above, it is seen that the petitioner, who has been duly served with summons as required under law, has not shown any cause, much less a sufficient cause, for not filing the petition in time and that she has also not explained the delay of 206 days that has occurred thereafter, leading to answer the point for consideration in the negative and against the petitioner."

The petitioner challenged the aforementioned order by filing an appeal under Section 20 of the Act. The Appellate Tribunal referred to the provisions of Section 27 of the General Clauses Act, 1897 and held that notice of O.A.No.738 of 2001 will be deemed to have been duly served on the petitioner and that the explanation given by her for not filing setting aside petition within the period of limitation was far from satisfactory. Paragraph 6 of the appellate order dated 30.10.2006 reads as under:

" On going through the appeal appears, I am satisfied that the appellant is not diligent in filing the appeal. The appeal papers were verified on 17.11.2005 and also filed before this tribunal on 11.11.2005. On close scrutiny, the Appellant had given the Vakalath undated, but said to have been executed on 12.12.2005 and was attested by the Notary on 14.12.2005. It is not known how the vakalath executed on 12.12.2005 was sought to be attested on 14.12.2005. All these things would manifestly prove that all are not well with the appellant even in filing the appeal before this Tribunal. Without further going deep into all these things, I come to the conclusion that the order passed by the DRT does not suffer from any infirmity, which requires interference by the Tribunal."

We have heard learned counsel for the parties and perused the record. In our opinion, the order impugned in the writ petition is liable to be set aside because the reasons assigned by the Appellate Tribunal for upholding dismissal of I.A.No.282 of 2004 in M.A.I.R.No. 49 of 2004 by the Tribunal are legally untenable. In the affidavit filed by her, the petitioner had set out detailed reasons for her inability to move the Tribunal for setting aside ex parte decree dated 04.08.2003. In the counter filed on behalf of the bank, an attempt was made to defend the ex parte proceedings, but no effort was made to controvert the assertion of the petitioner that she was not aware of the ex parte proceedings and that she could not come to India due to her studies in Bulgaria. However, without even adverting to her affidavit, the Tribunal dismissed the application for condonation of delay. The Appellate Tribunal did make a mention of the discrepancies in the dates in the appeal papers, but no reason has been assigned for discarding the affidavit filed by the petitioner in support of the application for condonation of delay. In our considered view, failure of the Tribunal and the Appellate Tribunal to deal with the issues of condonation of delay in a correct perspective has resulted in manifest injustice.

In the result, the writ petition is allowed. Order dated 30.10.2006 passed by the Appellate Tribunal in M.A.No.88 of 2006 is set aside and the case is remanded to the Tribunal for fresh adjudication of the application filed by the petitioner for setting aside ex parte decree dated 04.08.2003 passed in O.A.No.738 of 2001.

As a sequel to disposal of the writ petition, W.P.M.P.No.1549 of 2007 and 7106 of 2007 are disposed of as infructuous. Respondent No.1 bank shall now be entitled to encash the bank grantee of Rs.30,00,000/- which the petitioner had furnished in compliance of order dated 23.01.2007 passed by this Court.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

11.04.2007
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